

Information and Guidelines

**For Practice and Procedure
before**

The Honorable Michael A. Telesca

**United States District Court
for the Western District of New York**

1996

**Honorable Michael A. Telesca
2720 United States Courthouse
100 State Street
Rochester, NY 14614-1387
(716) 263-5780**

Revised as of October 1996

Communications and General Information

Address and Telephone Numbers

General Address:

United States Courthouse
100 State Street
Rochester, NY 14614
(716) 263-5780

Room:	Phone
2720 Judge Telesca	263-5780
2720 Judge Telesca's Secretary Joan Countryman	263-5780
2720 Judge Telesca's Law Clerks	263-6417
2751 Courtroom Deputy Melissa Kruk	263-6442
2120 District Court Clerk's Office Rachel Bandyh, Deputy Clerk in Charge	263-6263
2791 U.S. Court Reporter John DiMartino	263-5747

Hours

The Rochester Clerk's Office will be open for filing documents Monday through Friday from 9:00 A.M. to 5:00 P.M.

Motion Rules at a Glance

Motions Returnable: 9 A.M. Wednesday and Thursday of the first three weeks of each month, commencing the week of the first Monday in each month.

Oral Argument: Upon request and as Judge Telesca, in his discretion, requires.

Special Filing Rules: Yes

Courtesy Copies: No (unless specifically requested to do so).

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INTRODUCTION

The following guidelines are intended to aid the Bar in the practice of law before this Court. These guidelines are not intended to supersede the Local Rules of Practice for this District or the Federal Rules of Civil Procedure all of which remain in full force and effect.

I. Status Conferences

It is the policy of this Court to take an active role in the management of each case on its docket. In addition to the conferences called for by Local Rule of Civil Procedure 16.1, from time to time, at the request of a party or on the Court's own initiative, a status conference will be held in chambers to discuss the progress of the case and the possibility of settlement.

Attorneys who request the Judge's assistance in resolving a case are encouraged to contact the Courtroom Deputy to schedule such a conference.

II. Motion Practice

A. Motion Days

Motion days for Judge Telesca will be held at 9:00 A.M., Wednesday and Thursday of the first three (3) weeks of each month commencing the week of the first Monday in each month. (For example,

the first Monday in November, 1996, is the 4th. Motion days would thus be November 6 and 7, November 13 and 14, and November 20 and 21.) Parties need not call the courtroom deputy in advance to schedule return dates.

B. Filing of Motion Papers

All motion papers and supporting memoranda *must* be filed and served upon the opposing party in accordance with Local Rule of Civil Procedure 7.1.

C. Reply Papers

A moving party wishing to file reply papers must file and serve motion papers in accordance with Local Rule of Civil Procedure 7.1(c). The scope of reply papers should be limited to issues raised in the response papers opposing the motion. Failure to file timely either opposing papers or reply papers may result in adjournment of the motion by the Court and the possible imposition of sanctions against the offending attorney(s).

D. Cross-Motions

Cross-motions shall be filed no later than three (3) business days prior to the return date of the original motion. *See* Local Rule of Civil Procedure 7.1. Responses shall be filed at least one (1) business day prior to the return date.

E. Motion Scheduling

Regardless of the return date set forth in the motion, the Court may adjourn the motion on its own initiative at any time. Each party will be notified in advance of any such change by the Courtroom Deputy.

F. Adjournments

The Courtroom Deputy is in charge of all calendar matters. If you would like an adjournment, you must first reach agreement with your opposing counsel and then contact the Courtroom Deputy at the number provided under *Communications and General Information*. A motion may be adjourned once as of right where both parties consent. In situations where an opposing attorney will not consent to an adjournment, or where one adjournment has already been granted, the party requesting the adjournment should set forth in letter form his or her reasons for requesting the adjournment. Such letters should be directed to the Courtroom Deputy. *It is incumbent upon the party requesting an adjournment to notify the opposing party of the request and, if granted, the new motion date.*

Do not contact the Judge or his law clerks to request an adjournment.

G. Oral Argument

Oral argument will be heard on each motion beginning at 9:00 A.M. Attorneys for each party must appear to argue a motion or notify the Courtroom Deputy that by mutual consent of the parties the motion will be submitted. On all submitted motions, the moving party and the opposing party must each attach to their motion papers a proposed order granting or denying the relief requested. If counsel wishes to have a motion submitted without oral argument, merely state that on the notice of motion.

H. Ex Parte Application

Ex parte applications are disfavored by the Court and should be avoided except in the most extreme circumstances. Where such cases arise, the party submitting the application must state in the application that he or she has contacted opposing counsel in an attempt to resolve the situation through normal motion practice and why such an option is unsatisfactory, or, why contacting the opposing party would be inappropriate under the circumstances. *See* Local Rule of Civil Procedure 7.1. Applications for temporary restraining orders must comply strictly with the specific requirements set forth in Fed.R.Civ.P. 65.

III. Discovery and Subpoenas

A. Generally

Discovery disputes are generally referred to the Magistrate Judge for disposition.

B. Filing Requirement

Pursuant to Fed.R.Civ.P. 5(d) and Local Rule of Civil Procedure 7.1(a)(1), depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto, shall not be filed with the Clerk's office, except for use in a specific motion or proceeding, in *pro se* cases or otherwise by order of the Court.

C. Subpoenas - Fed.R.Civ.P. 45

1. Generally

Subpoenas in federal court are issued by the Clerk of the Court upon application by a party or by an attorney as officer of the Court in accordance with Fed.R.Civ.P. 45(a)(3). A witness fee of \$40 and a mileage fee of \$.31 per mile must be served with the subpoena. *See* 28 U.S.C. § 1821. The party is responsible for service of subpoenas. Fed.R.Civ.P. 45(b).

2. Deposition Subpoenas

To subpoena a witness to appear for a deposition, a party must first serve and file a notice to take deposition upon the other parties in the action. *See* Fed.R.Civ.P. 30(b) and 31(a). The attendance of a witness at a deposition may be compelled by a subpoena issued by the Clerk or an attorney as provided by Fed.R.Civ.P. 45(a)(3).

IV. Pre-Trial Conferences

In each civil action scheduled for trial, a final pre-trial conference will be scheduled approximately one week prior to the trial date. A letter will be sent to each of the attorneys advising them of the date and time of the conference and setting forth their responsibilities. These instructions should be read carefully and taken seriously.

V. Jury Selection Procedures

In both criminal and civil cases a jury is selected by employing the "Struck Jury" method. *See* U.S. v. Blouin, 666 F.2d 796 (2d Cir. 1982).

CIVIL JURY SELECTION

1. The Deputy will call 14 names for the panel and such persons will be seated in the order they are called in the jury box in seats 1 through 14.
2. The Judge will then voir dire the jury asking questions of his own and also any questions proposed by the attorneys which have been submitted for review to Judge Telesca at or before the pre-trial conference and which he considers appropriate. In an appropriate case, attorneys may be permitted to participate in the questioning process.
3. The Judge will excuse any prospective jurors for cause where appropriate, and replace them with new prospective jurors and the process above will be repeated.
4. When the Judge has determined that none of the 14 prospective jurors in the jury box should be dismissed for cause, the parties then may exercise their peremptory challenges.
5. Each side in a civil case may exercise or waive three peremptory challenges. *See* 28 U.S.C. § 1870. These challenges shall be exercised in three rounds, one challenge for

each side in each round. If both sides exercise all of their peremptory challenges, (total 6), the remaining 8 will be sworn in as the Jury.

6. In a case with multiple defendants, the attorneys for the defendants will confer and jointly exercise their three peremptories. With rare exception, will additional peremptories be allowed.
7. Typically in a civil case a jury of 8 will be selected and all will act as principal jurors. There are no alternates in a civil case. Fed.R.Civ.P. 48.

VI. Miscellaneous Provisions

A. Sanctions

1. Fed.R.Civ.P. 11 requires the attorney or unrepresented party who signs a pleading, motion or other paper, to certify that, to the best of his or her knowledge, information and belief formed after reasonable inquiry under the circumstances it has, or after a reasonable opportunity for further investigation is likely to have, evidentiary support; is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and denials of contended facts are warranted by evidence or are reasonably based on a lack of information or belief.

The Court will not hesitate to sanction any attorney who violates this rule.

2. Sanctions may also be imposed upon an attorney who is not properly prepared for a scheduling, status or pre-trial conference. *See* Fed.R.Civ.P. 16(f).
3. Abuse of discovery may also result in the imposition of sanctions against the offending party. *See* Fed.R.Civ.P. 37.

B. Stipulations

All stipulations, whether for an adjournment or discontinuance of an action, etc., should be submitted to the Judge for his approval. A standard stipulation form may be used by modifying such form and adding "So Ordered" and a signature line for the Judge at the bottom.

C. Orders

All orders which require the Judge's signature should be directed to his attention or to the attention of his law clerks. All other papers should be filed with the Clerk pursuant to Fed.R.Civ.P. 5(d). Whenever possible, orders will be signed the same day they are received.

After the Judge has instructed a prevailing party to submit an order, the prevailing party must have the proposed order approved by opposing counsel before it is submitted to the Judge for signature. In the event of a disagreement as to the form of an order, the prevailing party may bring a motion to settle the order pursuant to Local Rule of Civil Procedure 7.2.

Be advised that whenever a motion to settle an order is made, costs and attorney's fees will be awarded against an attorney who unreasonably withholds his or her consent as to form.

D. Requests for Enlargement of Time

All requests for enlargement of time shall be made in conformity with Fed.R.Civ.P. 6(b). Letter requests shall indicate: (1) by what date the party requesting the enlargement is required to respond, answer, or otherwise perform some act; (2) the length of the proposed extension; and (3) whether the other parties to the action have consented to such extension. Stipulations are encouraged.

Requests made after the specified period to respond, answer, or otherwise act has expired must be made in accordance with Fed.R.Civ.P. 6(b)(2). Letter requests made after the specified period has expired ***will not be considered*** by the Court unless all other parties to the action have stipulated to the extension.

E. Courtesy Copies

Please do not send courtesy copies of motion papers, memoranda, etc., to the Judge or his law clerks unless specifically requested to do so.

F. Law Clerk

Counsel or *pro se* parties desiring to speak to the Judge should make such a request to the Judge's secretary at the telephone number provided under ***Communications and General Information***. Law clerks are also available to assist with procedural questions from attorneys. This does not mean, however, that the Judge's law clerks are available to do your research. Do not abuse this assistance.

G. Transcripts of Court Proceedings

If a transcript of a court proceeding is desired, the Court Reporter should be contacted directly at the telephone number under ***Communications and General Information*** and a confirming letter sent. Transcripts will not be prepared unless ordered.

Orders and Forms

Form 1: Scheduling Order for Civil Cases

Form 2: Bankruptcy Appeal Notice

Form 3: Civil Bench Trial Letter

Form 4: Civil Jury Trial Letter

Form 5: Criminal Trial Letter